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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,626	12/30/2005	Giuliano Sciocchetti	10500-013	7020
29391 7590 09/26/2008 BEUSSE WOLTER SANKS MORA & MAIRE, P. A. 390 NORTH ORANGE AVENUE SUITE 2500 ORLANDO, FL 32801				
EXAMINER				
LARKIN, DANIEL SEAN				
ART UNIT		PAPER NUMBER		
2856				
MAIL DATE		DELIVERY MODE		
09/26/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/530,626

**Applicant(s)**

SCIOCCHETTI ET AL.

**Examiner**

DANIEL S. LARKIN

**Art Unit**

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 14 and 15 is/are rejected.  
7) ☐ Claim(s) 16-26 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 07 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claim 18 is indicated as containing allowable subject matter. The restriction requirement between species, as set forth in the Office action mailed on 15 August 2007, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 16-24, directed to species regarding the type of movable wall are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim. Claims 25 and 26, directed to a movable having a central portion movable within a peripheral position, have been rejoined because this limitation has not been found within the prior art in combination with all of the limitations of the base claim and any intervening claims.

In view of the above noted withdrawal of the restriction requirement, Applicants are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

3. The listing of references in the Search Report is not considered to be an information disclosure statement (IDS) complying with 37 CFR 1.98. 37 CFR 1.98(a)(2) requires a legible copy of: (1) each foreign patent; (2) each publication or that portion which caused it to be listed; (3) for each cited pending U.S. application, the application specification including claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion, unless the cited pending U.S. application is stored in the Image File Wrapper (IFW) system; and (4) all other information, or that portion which caused it to be listed. In addition, each IDS must include a list of all patents, publications, applications, or other information submitted for consideration by the Office (see 37 CFR 1.98(a)(1) and (b)), and MPEP § 609.04(a), subsection I. states, "the list ... must be submitted on a separate paper." Therefore, the references cited in the Search Report have not been considered. Applicants are advised that the date of submission of any item of information or any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the IDS, including all "statement" requirements of 37 CFR 1.97(e). See MPEP § 609.05(a).

***Drawings***

4. The drawings are objected to because of the following:

The lead line representing reference numeral "5a", as shown in Figures 1 and 2, appears to be directed to the shutter disk (17) rather than the surface of piston (5), as described in the specification.

The lead line representing reference numeral "49a", as shown in Figure 4, appears to be directed to the top surface of detecting element (50) rather than the outer surface of circular wall (49), as described in the specification, page 10, lines 24 and 25.

The lead line representing reference numeral "49b", as shown in Figure 4, appears to be directed to the outside portion of the cup-shaped body 47 rather than an inner surface as described in the specification, page 10, line 26. As one views the cup-shaped body 47, the portion on the right side, with respect to the longitudinal axis, is a showing of the outside of the cup-shaped body, whereas the view of the left side is a showing of the interior of the cup-shaped body 47.

The lead line representing reference numeral "61a", as shown in Figure 4, appears to be directed to the top surface of detecting element (56) rather than the outer surface of circular base (61), as described in the specification, page 10, line 27.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "52" has been used to designate both an "L-shaped slot", as shown in Figure 4, and a "pin", as shown in Figure 4.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

Reference numeral -- 53 -- does not appear within Figure 4 as suggested by the disclosure on page 10, line 10.

7. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "shutter surface carrying a second detecting element" in combination with all of the limitations of claims 14 and 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

8. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing

date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

9. The disclosure is objected to because of the following informalities:

Page 4, line 21: The article -- a -- should be inserted prior to the term "fluidtight".

Page 5, line 17: The conjunction -- and -- should be inserted after the term "invention".

Page 5, line 28: The article -- a -- should be inserted prior to the term "fluidtight".

Page 6, line 8: The article -- a -- should be inserted prior to the term "known"; and the term "centre" should be Americanized to read -- center --.

Page 6, line 14: The term -- inner -- should be inserted prior to the term "surface".

Page 6, line 15: The article -- a -- should be inserted prior to the term "fluidtight".

Page 6, lines 25 and 28: The article -- a -- should be inserted prior to the term "known".

Page 8, line 20: The term -- portion -- should be inserted after the term "withdrawn".

Page 10, line 1: The article -- a -- should be inserted prior to the term "fluidtight".

Page 11, lines 5 and 7: A -- comma -- should be inserted prior to the term "respectively".

Page 11, line 28: The term "centre" should be Americanized to read -- center --.

Page 14, line 4: The term "Claims" should be corrected to read -- claims --.

Appropriate correction is required.

### ***Claim Objections***

10. Claims 14-26 are objected to because of the following informalities:

Re claim 14, claim line 5: The article -- a -- should be inserted prior to the term "fluidtight".

Re claim 14, claim line 7: A -- semicolon -- should be inserted prior to the term "and".

Re claim 15, claim line 1: The term -- which -- should be inserted prior to the term "rests".

Re claim 18, claim line 1: The term "claim" should be corrected to read -- Claim --.

Re claim 19, claim line 2: The article -- a -- should be inserted prior to the term "fluidtight".

Re claim 22, claim line 3: The article -- a -- should be inserted prior to the term "fluidtight".



Re claims 23 and 24, claim line 1: The phrase "said further movable wall" lacks antecedent basis. Claim 22 recites a further measuring cell with a movable wall; however, the phrase further movable wall has not expressly been recited.

Re claim 26, claim line 2: The term -- rod -- should be inserted after the term "first". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,770,027 (Ehara et al.).

With respect to the limitations of claims 14 and 15, Ehara et al. disclose an device for measuring a gaseous product/odor, within a measuring cell (11), comprising: at least one filtering element (18); and at least one detecting element (13) housed inside the measuring cell (11); wherein the device comprises a movable wall (31) of said measuring cell; the movable wall being movable in fluidtight manner between a withdrawn position and a forward position; and the detecting element (13) is prevented from being impressed by resting against a shutter surface (31) of the measuring cell. The measuring wall containing the detecting element (13) has a recess (29) for

containing the detector, such that when the shutter/movable wall (31) is in a withdrawn position, as shown in Figure 3, the volume of the recess is combined with the volume of the chamber (11) to create the maximum available volume. When the shutter is closed, the chamber will have the smallest available volume. Ehara et al. further disclose that the shutter surface, the inside of which rests against the detector, is carried by the movable wall (31).

### ***Allowable Subject Matter***

13. The following is a statement of reasons for the indication of allowable subject matter:

Prior art was not relied upon to reject claims because the prior art fails to teach and/or make obvious the limitations cited above in combination with all of the limitations of the base claim.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to Applicants' disclosure.

The prior art to US 4,059,406 (Fleet) discloses an electrochemical detection system, comprising a sensor electrode (3) mounted to a screw mount (9) having the ability to increase or decrease the size of a cylindrical space/cell volume (8) for collecting a flow from an inlet line (2).

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL S. LARKIN whose telephone number is (571)272-2198. The examiner can normally be reached on 8:30 AM - 5:00 PM Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Daniel S. Larkin/  
Primary Examiner, Art Unit 2856  
24 September 2008